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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Florida Department of Management Services,)	DA 98-977
Motion for Declaratory Ruling or, in the)	
Alternative, Petition for Waiver)	

COMMENTS OF BELL ATLANTIC

Michael E. Glover
Of Counsel

Lawrence W. Katz

1320 North Court House Road
8th Floor
Arlington, Virginia 22201
(703) 974-4862

Attorney for the Bell Atlantic
Telephone Companies

June 11, 1998

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TABLE OF CONTENTS

	<u>PAGE</u>
I. Introduction	1
II. Argument	2
III. Conclusion	3

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COMMENTS OF BELL ATLANTIC¹

I. Introduction

The Commission should grant the petition of the Florida Department of Management Services ("Florida") and find that the mere exercise of renewal clauses in contracts for services provided to schools, libraries and rural health care facilities would not jeopardize their status as "existing contracts" under the Commission's Universal Service rules, 47 C.F.R. § 54.511(c). Such contract renewals under their original terms are not "voluntary extensions of existing contracts" which must be rebid to be eligible for universal service funding. *See* 47 C.F.R. § 54.511(d).

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

II. Argument

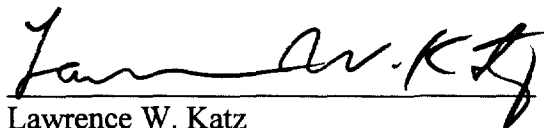
Florida has shown that the Commission should distinguish contracts that are voluntarily extended after the fact from those that are renewed pursuant to terms in the original contract. Under the rules, the former must be rebid in order to be eligible for funding. 47 C.F.R. § 54.511(d). The latter, on the other hand (if signed on or before July 10, 1997), should be considered simply continuations of existing contracts that are not subject to competitive bidding until the renewal term expires. 47 C.F.R. § 54.511(c)(1)(i) (“A contract signed on or before July 10, 1997 is exempt from the competitive bid requirements for the life of the contract.”).

The contracts in question were competitively bid at their inception, so the Commission’s policy of ensuring that all providers had an opportunity to bid to offer the service was met.. The renewal clause was included in the initial contract. Under that clause, the contract could be extended for a relatively short, specified period, at a specified rate, if one or both parties concur. There is no further negotiation over the rates, terms or conditions – either the renewal clause is exercised at the specified rate, or the contract lapses. The distinction between this type of contract and one that is subject to subsequent negotiation between the parties is one that the courts have recognized, as Florida shows. Petition at 5-7. Such renewal clauses “did not create new and successive contracts.... The option to extend, therefore, is in no different posture than the contract as a whole.” *City of Lakeland v. Union Oil Co. of California*, 352 F.Supp. 758, 763-64 (M.D. Fla. 1973) cited in Florida’s petition at 7. The Commission can reasonably make the same finding.

III. Conclusion

Accordingly, the Commission should grant Florida's petition and find that contracts signed on or before July 10, 1997 that contain specific renewal clauses and are not subject to renegotiation need not be rebid in order to receive universal service funding.²

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Lawrence W. Katz", written over a horizontal line.

Lawrence W. Katz

Michael E. Glover
Of Counsel

1320 North Court House Road
8th Floor
Arlington, Virginia 22201
(703) 974-4862

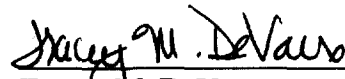
Attorney for the Bell Atlantic
Telephone Companies

June 11, 1998

² Bell Atlantic is also filing an electronic copy of these comments via the Internet.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June, 1998 a copy of the foregoing "Comments of Bell Atlantic" was sent by first class mail, postage prepaid, to the parties on the attached list.



Tracey M. DeVaux

* Via hand delivery.

Sheryl Todd*
Federal Communications Commission
Accounting Policy Division
Common Carrier Bureau
2100 M Street, NW
8th Floor
Washington, DC 20554

ITS, Inc.*
1919 M Street, NW
Room 246
Washington, DC 20554

Colette Bohatch, Esq.
1575 Eye Street, NW
Suite 300
Washington, DC 20005

Counsel for State of Florida Department of
Management Services

Paul Rowell
State of Florida Department of Management
Services
4050 Esplanade Way
Suite 260
Tallahassee, FL 32399-0950